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EXAMINER

YEAGLEY, DANIEL S

ART UNIT PAPER NUMBER

3611

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/611,620
Filing Date: July 01, 2003
Appellant(s): RICHLEN ET AL.

MAILED

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GROUP 3600

Thomas Otterlee
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/14/05 appealing from the Office action mailed 12/22/04.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 39 – 41 and 43 – 45.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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1. Claims 20, 34 and 42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

These claims only recite that the electronic device is an audio device. The examiner notes that the electronic device is not part of the claimed invention. Instead, the electronic device is merely an element of intended use, which is functionally recited in the preamble of the independent claims.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 17, 18, 20, 21 and 22 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Murayama.

Murayama teaches a break-away mounting system having the structure as broadly claimed. The system includes a first bracket 24 having an aperture (upper opening of 241), and a second bracket 53 having a tail 54 that extends through the aperture (figure 10). As shown in fig. 8, the brackets are disengaged by rotation of the second bracket about a line of contact relative to the first bracket, wherein the second bracket includes legs (horizontal bottom surface and surface

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of the vertical lip of bracket 53; wherein the legs contact the first bracket along a line during rotation of the second bracket) and wherein a portion of the cowl 1 is considered to comprise a spacer and is connected to the first bracket as broadly claimed (figure 5) and as shown in figure 1 extends above the upper portion of a riser of the motorcycle. Applicant should also note that the first bracket is *connectable* to at least one of the upper and lower portion of a motorcycle riser with a fastener through components of the cowl and frame of the motorcycle and the second bracket is *connectable* to an audible electronic device 12. The term “*connectable*” is merely functional, and only requires that the first bracket be capable of being connectable to a motorcycle.

4. Claims 17, 18, 19, 21, 22 and 33 – 37, are finally rejected under 35 U.S.C. 102(b) as being anticipated by Willey ‘965.

Willey teaches a break-away mounting system having the structure as broadly claimed. As shown in figs. 1 and 2, the system includes a first bracket which includes a bar 58/60 *connectable* to a motorcycle riser, a second bracket 88 which includes an attachment portion at numeral 94 (figure 5) that is substantially C-shaped and is detachably connected to the bar 60, and having legs (opposite side edges of element 82; figure 6, that contact the first bracket along a line of contact), wherein rotation of the second bracket about the line of contact disengages the second bracket from the first bracket as claimed, and further includes a spacer 56 that is connected to the first bracket and extends above the upper portion of a riser (the part of the fork tubes that are below the spacer 56); (figure 3 and 4, column 4, line 49-64), wherein the second bracket is *connectable* to an audio electronic device (radio, other accessories; column 1, line 17-

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20, column 2, line 31-35 and column 8, line 29-33), and wherein the first bracket includes an aperture (space (gap) between element 70 and cylindrical portion of bracket at numeral 58 of figure 2), such that the second bracket has a tail portion (left side of element 82 of figure 6) which is shown being extended through the aperture.

5. Claims 17, 18, 20, 22 and 23 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Stanberry.

Stanberry teaches a break-away mounting system having the structure as broadly claimed. The system includes a first bracket 2 *connectable* with a fastener to an upper or lower portion of a riser through components of the motorcycle, wherein a spacer 40 extends above the upper portion of the riser and is connected to the first bracket (figure 1), wherein the first bracket includes an grommet 36 disposed within an aperture (figure 6A), and further includes a second bracket (figure 6A; with rotatable screw 48) which is connected to the first bracket 2 and capable of being *connectable* to an audio electronic device, wherein the second bracket includes a tail portion 22 which passing through the aperture as claimed and is capable of being rotated relative to the first bracket during disengagement of the second bracket from the first bracket.

Allowable Subject Matter

6. Claims 39 – 41 and 43 – 45 are allowed.

7. Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Applicant's arguments, filed 12/14/05, with respect to claims 39 – 41, 43 and 45, have been fully considered and are persuasive. Therefore the rejections of claims 39 – 45 have been withdrawn. Regarding applicant arguments with respect to claims 17 – 37 have also been reconsidered but are deemed readable on the instant claims as broadly claimed. Neither the examiner nor the allowance conferees agree with applicants' argument that Murayama, Willey or Stanberry do not teach or suggest a mounting system as claimed. The claim limitation of the riser only requires the brackets be capable of being connectable to the riser by a fastener and as understood from the references, the first brackets for each reference is connected to the riser through other components of the motorcycle by some sort of fastening means, e.g. screws, bolts welds, or some other part of the motorcycle; and therefore are readable on the claim as broadly recited. Further, wherein in each reference cited is also readable as having a second bracket being connected to a first bracket as more thoroughly discussed in the rejections stated above. Wherein the second bracket further include legs; as stated in the rejection above, that branch from an element of the second bracket, such that the term "legs" are viewed as a branch from an object i.e.; "branch of a forked or jointed object" (Merriam Webster's Collegiate Dictionary) and therefore is readable on the claim as broadly recited because the legs of these references do rotate about a line of contact that contacts the first bracket as broadly recited. Further, in regards to the C-shaped portion of the attachment portion of the second bracket; Wiley clearly shows this feature in figure 5; as discussed in the rejection above. In conclusion, the applied references are considered to teach a mounting system that includes a first bracket that is "*connectable*" to at least one of the upper and lower portion of a motorcycle riser because the term "connectable" is

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
extremely broad and is merely functional, and only requires that the first bracket is capable of being connected to a motorcycle. Clearly, the devices taught by the applied references are capable of being connectable by a fastener means to the upper or lower portion of the motorcycle riser through other components of the motorcycle; such as the frame, fork assembly and/or a cowl. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

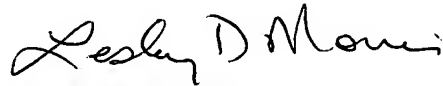
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